Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

October Term, 1998

CHRISTIAN CHIEJINA,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

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32 pp

QUESTION PRESENTED

Two federal circuit courts of appeal have held that the detention of a suspected internal drug carrier, stopped at the border, must be judicially reviewed not later than 48 hours after detention begins. The State of Florida has no such requirement. Chiejina was detained for eight days without judicial intervention. Does the Fourth Amendment require judicial oversight of an extended detention of a suspected alimentary canal smuggler who is stopped at the border or its equivalent.

TABLE OF CONTENTS

page(s)

QUESTION PRESENTED i

TABLE OF CONTENTS ..... ii-iii

TABLE OF AUTHORITIES iv

OPINIONS AND ORDERS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED 1-2

STATEMENT OF THE CASE 3-7

A. The Parties and the Motion to Suppress 3

B. Proceedings Below 6

REASONS FOR GRANTING THE PETITION 8-12

CONCLUSION 13

CERTIFICATE OF SERVICE 13

APPENDIX

Decision of
The Third District Court of Appeal ..... (A1-A7)

Opinion of
Third District Denying Rehearing ..... (A8)

Order of the Trial Court ..... (A9-A13)

TABLE OF AUTHORITIES

page(s)

United States v. Adekunle
2 F.3d 559 (5th Cir. 1993) 10

United States v. Esieke
940 F.2d 29 (2d Cir. 1991) 10

United States v. Montoya de Hernandez
473 U.S. 531, 105 S.Ct. 3304,
87 L.Ed.2d 381 (1985) 8,9,12

United States v. Odofin
929 F.2d 56 (2d Cir. 1991) 11

United States v. Onumonu
967 F.2d 782 (2d Cir. 1992) 11

United States v. Rodriguez
74 F.3d 1164 (11th Cir. 1996) 11

ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Petitioner, Christian Chiejina, respectfully petitions for a writ of certiorari to review the judgment and opinion of the Third District Court of Appeal of Florida in this case.

OPINIONS AND ORDERS BELOW

The opinion of the Third District Court of Appeal is reported at 721 So. 2d 748 (Fla. 3d DCA 1998), and is reprinted in the Appendix to this petition at A-1 through A-9. The order of the Third District Court of Appeal denying rehearing or certification is unreported and is reprinted at A-8. The trial court's order granting the Motion to Suppress is unreported and is reprinted in the Appendix to this petition at A-9 through A-13.

JURISDICTION

The Third District Court of Appeal entered its judgment on November 4, 1998 and denied rehearing or certification on December 17, 1998. This Court has jurisdiction pursuant to 28 U.S.C. 1257(a). Petitioner having asserted below and asserting herein a deprivation of rights secured by the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution which provides in pertinent part "the right of the

people to be secure in their persons...against unreasonable searches and seizures..."

STATEMENT OF THE CASE

The issue in this case is whether the Fourth Amendment of the United States Constitution requires judicial oversight of an extended detention of a suspected alimentary canal smuggler who is stopped at the border or its equivalent. Petitioner, based on the decisions of two federal Circuit Courts of Appeal, states the such judicial oversight is both necessary and required.

A. The Parties and the Motion to Suppress

Petitioner before the Court is Christian Chiejina. The Respondent is the State of Florida.

At 5:45 p.m. on May 14, 1996, Chiejina arrived at Miami International Airport from Jamaica.(R. 31).[1] Working at the airport was Senior Customs Inspector Nicholas Orlandi. Orlandi testified that he was assigned to a Rover team whose duties were to observe passengers and their behaviors to select certain passengers for secondary customs inspections. (R. 34).

Orlandi was requested by a supervisor to interview Chiejina and did so.[2] The interview revealed that Chiejina was a native of Nigeria who presently lived in New York. He was

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[1]The facts stated in this petition are taken from the evidence adduced at the hearing held on July 18, 1997 on a Motion to Suppress filed by Petitioner.

[2]There was no record evidence as to the particularized reason that Petitioner was stopped.

trained as an architect in Nigeria[3] and was presently working as a taxi dispatcher in New York. Chiejina told Orlandi that he had gone to Ecuador to visit a girlfriend and then to Jamaica to visit friends. (R. 32, 57). Chiejina was in possession of a valid passport in his own name, $20 in cash, and several credit cards. (R. 36, 44).

Orlandi further testified that the fact Chiejina was only carrying $20 in cash was indicative of Chiejina being a "swallower" because "a lot of the swallowers who are residents are paid over here so they don't have a large amount of money with them." (R. 36). Orlandi's suspicion was also aroused because Ecuador and Jamaica, according to Orlandi, are source countries for drugs.

Miranda Rights were then administered to Chiejina, who was then asked to give consent for an x-ray to determine if he was carrying drugs. The request was declined. (R. 36-37). Orlandi considered this suspicious since passengers who do not have pellets normally volunteer although "they have a right to decline to waive their rights." (R. 45). After the refusal to waive his rights or consent to an x-ray, Chiejina advised he was tired and wished to lay down. Orlandi also found that to be suspicious. After 2 ½ hours at the airport, Orlandi detained Chiejina as a possible internal narcotics carrier. (R. 38) and had him taken to Jackson Memorial Hospital to await the passing of any internally carried narcotics.

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[3]Petitioner has a degree in architecture from the City College of Neya, in Nigeria. (R. 56).

Chiejina was held at the hospital for eight days, without judicial intervention, awaiting the passing of any narcotics pellets. (R. 47). During the initial time at the hospital Chiejina was requested to walk about to stimulate passing any narcotic pellets. Initially, Chiejina would not do so. Chiejina declined to give his consent for emergency medical services. Orlandi initially testified that Chiejina refused to eat because he was fearful of being poisoned (R. 38-39); however, Orlandi later testified that Chiejina did eat. (R. 64).

Orlandi believed that Chiejina had passed a pellet and reswallowed it. He assumed this based upon an alleged observation by an unnamed inspector that was told to him by an unidentified individual that fecal matter was found on a handkerchief after Chiejina blew his nose. (R. 39).). Orlandi only recalls visiting the hospital once (R. 43) and was not present when this alleged nose blowing occurred (R. 39). Chiejina denied this incident ever happened (R. 61). Orlandi was advised that during the first 3 or 4 days of detention Chiejina soiled his pants. This led Orlandi to believe that Chiejina was squeezing liquid out of his body but not having a bowel movement. (R. 40). Chiejina was then handcuffed to a wheelchair after it was assumed that he had started reswallowing. (R. 65). Chiejina testified that he has handcuffed to the wheelchair after the first night of detention. (R. 59). Chiejina further stated that he was not handcuffed when allowed to go to the bathroom. He was only permitted to shower twice, once handcuffed and once not. (R. 59-60). Chiejina was required to sleep in the wheelchair as well. (R. 58).

Orlandi, upon being recalled, testified that he saw Chiejina walking at the hospital, that Chiejina was handcuffed only after he started swallowing his feces, and slept in bed at night. (R. 63-66).

Eventually after seven days of detention, Chiejina began passing pellets and ultimately passed a total of 38 pellets. (R. 42). He was turned over to the arresting authorities on May 22. (R. 43). As the State conceded, at no time prior to May 22 was this matter brought to the attention of any judge (R. 53). The trial court expressed his concern over the failure to bring Chiejina before "any judicial officer or other hearing officer regarding this man's continued detention." (R. 53).

B. Proceedings Below

The trial court, after a hearing on the motion to suppress, determined that although the initial stop and detention of Chiejina was reasonable,

> his continued detention for a period of eight (8) days, under the conditions testified to without being brought before an independent tribunal either Federal or State which were readily available to seek a remedy to end the prolonged detention became unreasonable and "ONE OF A PARTICULAR OFFENSIVE MANNER" furthermore the government has not demonstrated the existence of a bonafide emergency or extraordinary circumstances to justify a lengthier delay. (A12-13, *Infra*).

The trial court, relying on the Fourth Amendment to the United States Constitution, suppressed the evidence recovered from Chiejina.

The State of Florida appealed that decision to the Third District Court of Appeal of Florida. In its opinion[4] the appellate court reversed. The district court of appeal concurred with the reasoning of the trial court that the totality of facts supported the trial court's conclusion that there was reasonable suspicion to believe that Chiejina was an alimentary canal smuggler. The appellate court, however, disagreed with the trial court and found that the trial court erred in finding that Chiejina's continued detention was unreasonable. The appellate court found that because the eight-day detention was solely the result of evasive actions taken by Chiejina and could have been ended by Chiejina consenting to an x-ray or allowing nature to take its course, the suppression should be reversed. (A7, *infra*). Chiejina's request for rehearing or for certification was denied.

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[4]*State of Florida v. Chiejina*, 721 So. 2d 748 (Fla. 3d DCA 1998). (A1-A7 *infra*).

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT THE WRIT TO HARMONIZE CONFLICTING LOWER COURT RULINGS THAT IMPOSE DIFFERENT STANDARDS, IF ANY, ON POLICE AUTHORITIES IN THE CASE OF THE EXTENDED DETENTION OF A SUSPECTED ALIMENTARY CANAL SMUGGLER WHICH IS BASED SOLELY ON THE GEOGRAPHIC LOCATION OF THE DETENTION.

The ramifications of the decision of the Third District Court of Appeal are enormous. The essential finding that an international traveler can be held, virtually indefinitely, without judicial intervention or supervision, based on mere suspicion, requires this Court's review.

If the forces of nature had remained abated for an additional week or more, the detention, if one follows the rationale of the Florida appellate court, could have continued. When would the detaining authorities have been required to seek judicial review or approval? The Florida decision implies that the answer may be, never.

In *United States v. Montoya De Hernandez*, 473 U.S. 531, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985), this Court held that:

> the detention of a traveler at the border, beyond the scope of a routine customs search and inspection, is justified at its inception if the customs agents, considering all the facts

> surrounding the traveler and her trip, reasonably suspect that the traveler is smuggling contraband in her alimentary canal.

Id. at 541. While Chiejina here disputes that the customs inspector had reasonable suspicion to believe he was smuggling contraband in his alimentary canal[5], the length of the detention is what distinguishes the instant cause from *Montoya De Hernandez*. After 16 hours in custody, customs officials sought, and later that evening obtained, a court order authorizing a rectal examination and involuntary x-ray of *Montoya De Hernandez*. She was taken to a hospital, given a pregnancy test (which later proved negative), and was subjected to a rectal examination. A balloon containing a foreign substance was removed. She was arrested. Within the next four days she passed 88 balloons containing cocaine. The court found that under the circumstances the 16-hour detention not unreasonable but stated:

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[5]Compare facts in *Montoya De Hernandez* where respondent had made eight recent trips to Miami or Los Angeles, spoke no English, had no family, or friends in United States, came to purchase goods for husband's store in Bogota, Colombia, inspectors recognized Bogota as "source city" for drugs, possessed $5,000 in cash but no billfold, had no appointments with merchandise vendors, but planned to ride taxicab to visit retail stores to buy goods for $5,000. She had no hotel reservation, but planned to stay at Holiday Inn, and didn't recall how her ticket was purchased. She had one small valise with cold weather clothing, only high-heeled shoes she was wearing and no checks, waybills, credit cards or letters of credit, but produced a Colombian business card and old receipts. Petitioner intends to raise the issue of reasonable suspicion should the court grant certiorari.

> This length of time undoubtedly exceeds any other detention we have approved under reasonable suspicion.

Id. at 543.

There the Court acknowledged that 16 hours was longer than any other approved detention. Chiejina was subjected to unreviewed detention for eight days.

In *United States v. Adekunle*, 2 F.3d 559, 562 (5th Cir. 1993), the court issued a prospective rule that Fourth Amendment principles require the government, when detaining a suspected alimentary canal drug smuggler, to seek and obtain a judicial determination within 48 hours, that reasonable suspicion exists to continue the detention. "Failure to obtain such a judicial determination within 48 hours shifts the burden to the government to demonstrate a bona fide emergency or extraordinary circumstance justifying the lengthier delay." The court, interpreting *Montoya De Hernandez*, *supra*, recognized that this court "left open the possibility that the balance of fourth amendment interests may shift with the increase in the duration of the detention."

> As the detention becomes more prolonged, the "calculus of interests", shifts from the government to the person in custody. If the fourth amendment is to have any meaning, it must require a judicial determination that there is a basis - for any extended restraint of liberty.

Id. at 561-562. In *United States v. Esieke*, 940 F.2d 29, 36 (2d Cir. 1991), the court issued a prospective rule in the case

of a detention of an alimentary canal smuggler. The governmental agency overseeing the detention shall notify the local U.S. Attorney within 24 hours of the decision to detain. The U.S. Attorney is to then immediately notify a U.S. Magistrate Judge and the detainee's counsel (or the Legal Aid Society) of the detention.

A burden has been placed on the government by two circuit courts of appeal to take the necessary steps to advise a judge of the continued detention.

The Eleventh Circuit when confronting this issue in *United States v. Rodriguez*, 74 F.3d 1164, 1165 (11th Cir. 1996), while indicating that the suspect has "some control over the length of his detention," acknowledged that "there may be some limits on how long police can detain a suspected internal carrier." The court found that those limits were not approached by a 90-minute detention.

Other cases decided since *Montoya De Hernandez*, *supra*, have ratified extended detentions under circumstances different than Chiejina's. *See United States v. Odofin*, 929 F.2d 56 (2d Cir. 1991)(24 day detention not unreasonable where judicial supervision after fifth day) and *United States v. Onumonu*, 967 F.2d 782 (2d Cir. 1992)(four day detention not unreasonable), *but see Esieke, supra*, now imposing rules in Second Circuit.

The question presented is an important one. Since this Court's opinion in *Montoya De Hernandez* at least two federal circuits have imposed rules in the detention of alimentary canal smugglers. A third circuit court has indicated that limits may exist for the lengthy detention of such a suspect.

In the present state of the law a suspected alimentary canal smuggler may be treated differently depending upon their point of entry into the United States. If they enter in New Orleans (5th Circuit) there may be one set of rules, New York (2d Circuit) another, and Miami (11th Circuit) a third. The extreme sanction of a potentially unlimited and unreviewed detention by governmental authorities is an issue that merits this court's concern and immediate attention.

It is appropriate for this Court to clarify its holding in *Montoya De Hernandez* and reconcile any uncertainty in the treatment of travelers coming into the United States.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Rivergate Plaza, Suite #950, 444 Brickell Avenue, Miami, FL 33131 this 22nd day of March, 1999.

HOWARD SOHN
Counsel of Record

No. _____

IN THE

Supreme Court of the United States

October Term, 1998

CHRISTIAN CHIEJINA,

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v.

THE STATE OF FLORIDA,

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PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL

APPENDIX

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INDEX

Decision of
The Third District Court of Appeal ..... (A1-A7)

Opinion of
Third District Denying Rehearing ..... (A8)

Order of the Trial Court ..... (A9-A13)

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1998

THE STATE OF FLORIDA,	**	
Appellant,	**	
vs.	**	CASE NO. 97-2422
CHRISTIAN CHIEJINA,	**	LOWER TRIBUNAL NO
Appellee.	**	96-16080

Opinion filed November, 1998.

An appeal from the Circuit Court for Dade County, Manuel A. Crespo, Judge.

Robert A. Butterworth, Attorney General, and Michael J. Neimand, Assistant Attorney General, for appellant.

Bennett H. Brummer, Public Defender, and Donald Tunnage, Assistant Public Defender, for appellee.

Before NESBITT, LEVY and SORONDO, JJ.

SORONDO, J.

Appellee, Christian Chiejina (defendant), was charged with trafficking in heroin. The state appeals from an order of the trial court suppressing 1.31 pounds of heroin seized following an eight day warrantless detention of defendant, based upon the conclusion that the length of the detention was unreasonable. We reverse.

The facts of this case are particularly repugnant, however we are compelled to address them in detail as they are essential to our analysis. At the suppression hearing, the state presented the testimony of Senior Customs Officer Nicholas Orlandi (Orlandi). Orlandi testified that on May 14, 1996, he was working at Miami International Airport when he was asked by a Customs supervisor to interview defendant, who had arrived on a flight from Jamaica. Defendant told Orlandi that he was an architect and a native of Nigeria, who lived in New York and worked as a taxi dispatcher. He stated that he had gone to Ecuador to visit a girlfriend and then to Jamaica to visit friends. Orlandi testified that both Ecuador and Jamaica were "source countries" for drugs. Defendant carried a passport and credit cards, but only $20 in cash. Based on this information and his training and experience, Orlandi suspected that defendant was carrying narcotics in his alimentary canal. Defendant was read his Miranda[1] rights and asked to allow an x-ray to be taken of his stomach. He refused to waive his rights or be x-rayed. Orlandi testified this behavior was further indicative that defendant was a "swallower" because in his experience a person who was not a smuggler would waive his rights and allow the x-ray. Defendant further aroused Orlandi's suspicion by suddenly, and for no apparent reason, asserting that he was tired and then lying down on the floor.

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[1]Miranda v. Arizona, 384 U.S. 436 (1966).

Defendant was taken into custody and transported to Ward D at Jackson Memorial Hospital. Once at Ward D, suspected swallowers are asked to walk because exercise usually stimulates a bowel movement. Orlandi testified that defendant initially refused to walk about, refused consent for medical service in the event of an emergency and refused to eat, asserting that the nurse was trying to poison him. Defendant later ate very small amounts of dry cereal in the morning and drank sips of water.

During the first few days at Ward D, defendant soiled his pants and was given fresh clothing three or four times a day. This was indicative of the fact that defendant was actually squeezing liquids out of his rectum, while not moving his bowels. Defendant continued to refuse to eat in order not to have a bowel movement. Orlandi testified that at one point defendant blew his nose and upon inspection of the tissue feces was observed, which was indicative of the fact that defendant had passed some drugs and then re-swallowed them. After it became apparent that defendant was re-swallowing his feces, he was handcuffed to a wheelchair. On May 21, 1996, seven days after defendant was detained, he passed nine pellets of heroin. Thereafter, he had several more bowel movements until he passed a total of thirty-eight pellets of heroin.

Defendant testified that after the first night of his detention he was handcuffed to a wheelchair twenty-four hours a day. He was not allowed to go to the restroom and was given a bedpan. Defendant testified that he slept in the wheelchair and was only allowed to shower twice, once while handcuffed and once without the handcuffs. Defendant denied eating his

fecal matter or blowing his nose as described.[2]

The trial court found that the initial stop and detention of defendant was reasonable. However, the court found that the prolonged, eight-day detention was unreasonable as it was one of a particular offensive manner and done without judicial approval or extraordinary circumstance to justify the lengthy delay. As such, the court suppressed the heroin.

We begin our analysis by noting that a traveler's expectation of privacy is less at the border than in the interior, and "the Fourth Amendment balance between the interests of the Government and the privacy right of the individual is also struck much more favorably to the Government at the border." United States v. Montoya de Hernandez, 473 U.S. 3531, 539-40 (1985). "[T]he detention of a traveler at the border, beyond the scope of a routine customs search and inspection, is justified at its inception if customs agents, considering all the facts surrounding the traveler and [his] trip, reasonably suspect that the traveler is smuggling contraband in [his] alimentary canal." Id. at 541.

The defendant in this case arrived from Jamaica, was a native of Nigeria, and had traveled through Ecuador. All three of these nations are "source countries" for narcotics. Although defendant had a passport and credit cards, he carried only

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[2]While the trial court noted a portion of the defendant's testimony in its order, it made no credibility determination. The state presented rebuttal testimony from Orlandi, who testified that the defendant was allowed to sleep in a bed every night and was only handcuffed to the wheelchair after he started reswallowing what he was excreting.

twenty dollars in currency. Orlandi testified that this was consistent with a swallower who was a U.S. resident, as they are often paid there and thus travel with little cash. Orlandi's suspicion was heightened further when defendant refused a request that he submit to an x-ray examination. This refusal is significant as "an x-ray examination . . . would have easily determined whether the reasonable suspicion that [the defendant] was concealing contraband was justified." Id. at 545 (Stevens, J., concurring); United States v. Odofin, 929 F. 2d 567, 59(2d Cir. 1990) ("It is the experience of Customs Officials that almost all people who refuse to be x-rayed by them are carrying narcotics internally"); see also United States v. Onumonu, 967 F. 2d 782 (2d Cir. 1992); United States v. Esieke, 940 F. 2d 29 (2d Cir. 1991); United States v. Mosquera-Ramirez, 729 F. 2d 1352 (11th Cir. 1984). Thereafter, in the midst of the customs investigation, defendant quite peculiarly asserted that he was tired and wanted to lay down on the airport floor. Taken in their totality, these facts supported a reasonable suspicion that defendant was an alimentary canal smuggler. See Montoya de Hernandez, 473 U.S. at 541-42; Onumonu, 967 F. 2d at 789 (evidence that defendant was nervous, sweating profusely, traveling from a source country and declined to be x-rayed was sufficient to establish reasonable suspicion of alimentary canal smuggling). As such, the trial court correctly determined that defendant's initial detention was reasonable.

We turn to the trial court's evaluation of the propriety of defendant's continuing detention and conclusion that its length and nature rendered it unreasonable. We recognize that circumstances may arise that could render a traveler's continued detention an unreasonable seizure, and therefore unconstitutional. However, where a traveler at the border is reasonably suspected to be an internal drug carrier and refused

to consent to an x-ray examination without any medical justification, it is permissible to detain the suspect "until [his] bodily processes dispel the suspicion that [he] will introduce a harmful agent into this country." Montoya de Hernandez, 473 U.S. at 544; see also Onumonu, 967 F. 2d at 784-85 (approving six day detention; four days until defendant passed first condoms containing heroin); Odofin, 929 F. 2d at 58 (approving twenty-four day detention before bowel movement); United States v. Henao-Castano, 729 F. 2d 1364, 1366 (11th Cir. 1984); but see United States v. Adekunle, 980 F. 2d 985, 990 (5th Cir. 1992)(approving total detention of over four days, with over two days before first heroin-filled balloon was passed, but announcing prospective rule that agency overseeing detentions must inform prosecuting attorney within 24 hours of its decision to detain a suspected smuggler, who must in turn immediately notify a judge and the detainee's counsel of the continued detention); United States v. Esieke, 940 F. 2d 29, 367 (2d Cir. 1992) (same).[3]

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[3]Our research reveals that no other United States Circuit Court of Appeals has followed Adekunle or Esieke. Since these cases were decided, the Eleventh Circuit Court of Appeals has addressed the detention issue in United States v. Rodriguez, 74 F.2d 1164 (11th Cir. 1996), and stated:

> Once reasonable suspicion exists that a person entering the country is an internal drug smuggler, the government may detain the traveler until enough time has passed to allow the contents of the suspected drug smuggler's stomach to be excreted. United States v. Henao-Castano, 729 F. 2d 1364, 1366 (11th Cir. 1984). The traveler-suspect often has some control over the length of detention; for example, he could choose the usually speedier alternative of an x-ray examination.

In this case, the length and nature of defendant's eight-day detention resulted solely from the extreme evasive actions he took refusing to eat and walk about, desperately avoiding having a bowel movement, and even swallowing his own feces. While the length of the detention and the unsavory events that followed may be "offensive," as characterized by the trial court, it is equally apparent that the defendant alone was responsible for his situation and that he was , at all times, capable of ending the ordeal by consenting to an x-ray or by simply allowing nature to take its course. Accordingly, we conclude that the trial court erred in finding that defendant's continued detention was unreasonable. See Montoya de Hernandez, 473 U.S. at 543-44; Onumonu, 967 F. 2d at 790.

The trial court's order granting defendant's motion to suppress evidence is reversed and the matter is remanded for trial.

Id. at 1164-65. Although the Court acknowledged that there "may be limits on how long police can detain a suspected internal carrier," id. at 1165, it has not adopted the judicial supervision requirement of Adekunle and Esieke. This position is consistent with the United States Supreme Court's position in Montoya de Hernandez that "the detention of a suspected alimentary canal smuggler at the border is analogous to the detention of a suspected tuberculosis carrier at the border; both are detained until their bodily processes dispel the suspicion that they will introduce a harmful agent into this country." 473 U.S. at 544.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1998

THURSDAY, DECEMBER 17, 1998

THE STATE OF FLORIDA,	**	
Appellant,	**	
vs.	**	CASE NO. 97-2422
CHRISTIAN CHIEJINA,	**	LOWER
Appellee.		TRIBUNAL NO
Appellee.	**	96-16080

Upon consideration, appellant's motion for rehearing or, in the alternative, for certification is hereby denied. NESBITT, LEVY and SORONDO, JJ., concur.

A True Copy
ATTEST:

MAY CAY; BLANKS
CLERK District Court of
Appeal Third District

BY:_____
Deputy Clerk

cc: Michael J. Neimand
Roy A. Heimlich
Donald Tunnage

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff

CASE NO: 96-16080

VS.

JUDGE: MANUEL A. CRESPO

CHRISTIAN CHIEJNA
Defendant.

Division 10

ORDER ON DEFENDANT'S CHRISTIAN CHIEJNA'S MOTION TO SUPPRESS EVIDENCE

THIS CAUSE, having come before this Court, and this Court having heard very persuasive argument from both Mr. Harvey Hyman, Esq., Assistant State Attorney on behalf of the State of Florida and Mr. Roy Gonzalez, Esq., Assistant Public Defender on behalf of the Defendant, CHRISTIAN CHIEJNA, and having also heard Sworn Testimony from Mr. Nicolas Orlandi, Customs Inspector, and this Court having reviewed all pleadings and applicable case law hereby rules as follows:

The Court finds that the Defendant, CHRISTIAN CHIEJNA, a citizen of Nigeria, who resides in the Bronx, New York, and who is an Architect by profession and a Taxi Driver in this country, arrived at Miami International Airport on a flight from Jamaica on May 14, 1996 at approximately 6:30 pm.

At said time and place the Defendant was observed by Inspector Orlandi of the U.S. Customs Service. He was stopped

(A9)

by Inspector Orlandi who reviewed his passport, identification, credit cards, cash money, and itinerary. Inspector Orlandi then determined that based on MR. CHIEJNA'S itinerary (Eduador, Jamaica, + Jamaica, Miami), only having $20.00 cash on his person, lack of a plausible explanation for his itinerary, uncooperativeness, and the fact that at one point MR. CHIEJNA announced that he was very tired and actually laid down to sleep, convinced Inspector Orlandi that he had probable cause to believe that MR. CHIEJNA was carrying drugs internally.

MR. CHIEJNA was then asked to sign a Rights Waiver form which he refused and to sign a Consent Form to be x-rayed which he also refused. The Defendant was then detained in the Custom's enclosure at Miami International Airport until approximately 12:00 midnight when he was transported by Inspector Orlandi to Ward D at Jackson Memorial Hospital.

Upon arrival at that facility MR. CHIEJNA was placed in a wheelchair and handcuffed to it. He was placed in a location inside Ward D where he was being constantly observed by a guard. He was then allowed bathroom privileges but only with a guard present. He was allowed to shower but according to the Defendant only in handcuffs. The Defendant also testified that he was kept handcuffed to a wheelchair the entire time he was there. According to the testimony of Inspector Orlandi, MR. CHIEJNA was kept under observation for eight (8) days, to-wit: May 15th, 16th, 17th, 18th, 19th, 20th, 21st, and 22nd of May 1996.

The testimony revealed that during this time of detention the Defendant refused to eat except minimal amounts of food in the mornings, soiled is underwear on several

occasions, and was observed either actually swallowing or attempting to swallow his own feces. On May 22, 1996, at 6:30 p.m. the Defendant passed thirty-eight (38) pellets containing 1.31 pounds of heroin.

When asked why was MR. CHIEJNA or the matter of his detention was never brought before either a Federal Magistrate or a State Judge, Inspector Orlandi testified that at some point in the detention process an Assistant U.S. Attorney was consulted who according to the witness advised that the detention continue as is.

It is well established by both statute and the case law that in border searches law enforcement representatives such as Customs Inspectors have almost unlimited authority to both search and detain
persons entering the United States from foreign lands.

"The executive branch of Government has plenary authority to conduct searches and seizures at any point in its border, without probable cause or warrant, in order to prevent the introduction of contraband into this Country." U.S. vs. Ramsey, 431 U.S. 606, U.S. Supreme Court, 1972.

"Our nation's border holds a special place in Fourth Amendment Jurisprudence pursuant to the longstanding right of the Sovereign to protect itself by stopping and examining persons and property crossing into this country". U.S. vs. Sandoval Vargas, 854 F.2d 1132 9th Circuit Court of Appeals, 1988.

"Congress has conferred broad authority on customs officers to search all persons coming into the United States

from foreign countries." 19 United States Code Section 1582.

"Thus at the border one's expectations of privacy is less than in the interior of the country and the Fourth Amendment balance between the government's interests and the traveler's privacy rights is struck much more favorably to the government". U.S. vs. Montoya de Hernandez, 473 U.S. 5390, U.S. Supreme Court, 1990.

WHEREFORE, based on the above authority this Court finds that the initial stop and detention of CHRISTIAN CHEIJNA by Inspector Orlandi at Miami International Airport was reasonable and in accordance with applicable law.

HOWEVER, the Fourth Amendment still has a reasonableness requirement which tempers such border authority. Although the Supreme Court has not defined what a "REASONABLE" search is when a body search is performed, it has held that such a search may be unreasonable if it were done in a "PARTICULARLY OFFENSIVE MANNER". U.S. vs. Ramsey., ID.

"Under basic Fourth Amendment principles, government, after detaining suspected alimentary canal drug smuggler, must seek, within reasonable period, judicial determination, through informal presentation of evidence supporting custom agent's suspicion before neutral and detached judicial officer, within 48 hours shifts burden to government to demonstrate bona fide emergency or extraordinary circumstances justifying lengthier delay." U.S.C.A. Const. Amend. 4 CHRISTIAN CHIEJNA, was reasonable, his continued detention for a period of eight (8) days, under the conditions testified to without being brought

before an independent tribunal either Federal or State which were readily available to seek a remedy to end the prolonged detention became unreasonable and "ONE OF A PARTICULAR OFFENSIVE MANNER" furthermore the government has not demonstrated the existence of a bonafide emergency or extraordinary circumstances to justify a lengthier delay.

WHEREFORE, Defendant's Motion to Suppress the Evidence, to-wit: 1.31 pounds of heroin obtained herein is hereby suppressed.

MOTION GRANTED.

DONE and ORDERED at Miami, Dade County, Florida this 5th day of August, 1997.

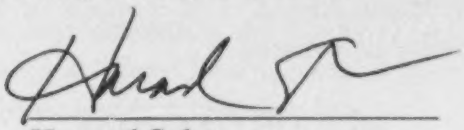
MANUEL A. CRESPO
CIRCUIT COURT JUDGE

cc:
Harvey Hyman, Asst. State Atty.
Roy Gonzalez, Asst. Public Defender
Court file

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Rivergate Plaza, Suite #950, 444 Brickell Avenue, Miami, FL 33131 this 12th day of March, 1999.

Respectfully submitted,



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Supreme Court, U.S.
FILED
MAY 19 1999
CLERK

(2)

CASE NO. 98-1495

IN THE UNITED STATES SUPREME COURT
October Term 1998

CHRISTIAN CHIEJINA,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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1788

QUESTION PRESENTED

Is it reasonable and permissible under the Fourth Amendment to detain a suspected internal drug carrier at a border, who has refused consent to an x-ray examination where no medical justification is evident, for a sufficient time, without judicial intervention, to permit the passage of the ingested material? (Restated.)

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE AND FACTS 4

REASONS FOR DENYING THE WRIT 9

CONCLUSION 14

TABLE OF AUTHORITIES

CASES **PAGE**

Chiejina v. State,
721 So. 2d 748 (Fla. 3d DCA 1998). 1

County of Riverside v. McLaughlin,
500 U.S. 44, 111 S. Ct. 1661,
114 L. Ed. 2d 49 (1991) 13

Stewart v. LaGrand,
___ U.S. ___, 118 S. Ct. 1018,
___ L. Ed 2d ___ (1999) 13

United States v. Adekunle,
980 F.2d 985 (5th Cir. 1992) 7

United States v. Esieke,
940 F.2d 29 (2nd Cir. 1991) 8

United States v. Montoya de Hernandez,
473 U.S. 531, 105 S. Ct. 3304,
87 L. E. 2d 381 (1985) 6,7,9

United States v. Oyekan,
786 F.2d 832 (8th Cir. 1986) 12

United States v. Vega-Barvo,
729 F.2d 1341 (11th Cir. 1984) 12

STATUTES

28 U.S.C. § 1257(a) 2

CASE NO. 98-1495

IN THE UNITED STATES SUPREME COURT
October Term 1998

CHRISTIAN CHIEJINA,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

OPINION BELOW

The decision from which Petitioner seeks to invoke the discretionary review of this Court is reported at *Chiejina v. State*, 721 So. 2d 748 (Fla. 3d DCA 1998). [A1].[1] The trial court's order granting the motion of Petitioner to suppress the evidence is not reported. [A9].

JURISDICTION

The Third District Court of Appeal of Florida's opinion was filed on November 4, 1998 and rehearing was denied on

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[1] The symbol "A" followed by the appropriate number represents a citation to the materials contained in the Petitioner's Appendix to his Petition.

December 17, 1998. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution, provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause...

Amendment XIV, §I, United States Constitution, provides, in pertinent part:

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law...

Article I, § 12, Florida Constitution, provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the communication to be intercepted, and the nature of the evidence to be obtained.

This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution,

STATEMENT OF THE CASE AND FACTS

Petitioner, Christian Chiejina, was the Appellee in the Third District Court of Appeal of Florida. In the trial court Petitioner was charged with trafficking in heroin. On Petitioner's motion to suppress, the trial court suppressed 1.31 pounds of heroin seized following an eight day warrantless detention of Petitioner, based on the conclusion that although the initial detention was reasonable its length was unreasonable. [A2]. The facts of the case, as set forth by the Third District Court of Appeal of Florida in its decision reversing the trial court's order, are as follows:

> The facts of this case are particularly repugnant, however we are compelled to address them in detail as they are essential to our analysis. At the suppression hearing, the state presented the testimony of Senior Customs Officer Nicholas Orlandi (Orlandi). Orlandi testified that on May 14, 1996, he was working at Miami International Airport when he was asked by a Customs supervisor to interview defendant, who had arrived on a flight from Jamaica. Defendant told Orlandi that he was an architect and a native of Nigeria, who lived in New York and worked as a taxi dispatcher. He stated that he had gone to Ecuador to visit a girlfriend and then to Jamaica to visit friends. Orlandi testified that both Ecuador and Jamaica were "source countries" for drugs. Defendant carried a passport and credit cards, but only $20 in cash. Based on this information and his training and experience, Orlandi suspected that defendant was carrying narcotics in his alimentary canal. Defendant was read his Miranda rights and asked to allow an x-

ray to be taken of his stomach. He refused to waive his rights or be x-rayed. Orlandi testified this behavior was further indicative that defendant was a "swallower" because in his experience a person who was not a smuggler would waive his rights and allow the x-ray. Defendant further aroused Orlandi's suspicion by suddenly, and for no apparent reason, asserting that he was tired and then lying down on the floor.

Defendant was taken into custody and transported to Ward D at Jackson Memorial Hospital. Once at Ward D, suspected swallowers are asked to walk because exercise usually stimulates a bowel movement. Orlandi testified that defendant initially refused to walk about, refused consent for medical service in the event of an emergency and refused to eat, asserting that the nurse was trying to poison him. Defendant later ate very small amounts of dry cereal in the morning and drank sips of water.

During the first few days at Ward D, defendant soiled his pants and was given fresh clothing three or four times a day. This was indicative of the fact that defendant was actually squeezing liquids out of his rectum, while not moving his bowels. Defendant continued to refuse to eat in order not to have a bowel movement. Orlandi testified that at one point defendant blew his nose and upon inspection of the tissue feces was observed, which was indicative of the fact that defendant had passed some drugs and then re-swallowed them. After it became apparent that defendant was re-swallowing his feces, he was

> handcuffed to a wheelchair. On May 21, 1996, seven days after defendant was detained, he passed nine pellets of heroin. Thereafter, he had several more bowel movements until he passed a total of thirty-eight pellets of heroin.
>
> Defendant testified that after the first night of his detention he was handcuffed to a wheelchair twenty-four hours a day. He was not allowed to go to the restroom and was given a bedpan. Defendant testified that he slept in the wheelchair and was only allowed to shower twice, once while handcuffed and once without the handcuffs. Defendant denied eating his fecal matter or blowing his nose as described. [A2-A4].

Based on the foregoing facts, the trial court found that the initial stop and detention of defendant was reasonable. However, the trial court found that the prolonged, eight-day detention was unreasonable as it was one of a particular offensive manner and done without judicial approval or extraordinary circumstance to justify the lengthy delay. As such, the trial court suppressed the heroin. [A4].

The Third District began its analysis by noting that a traveler's expectation of privacy is less at the border than in the interior, and finding that, pursuant to this Court's opinion in *United States v. Montoya de Hernandez*, 473 U.S. 531, 105 S. Ct 3304, 87 L. E. 2d 381 (1985), the Fourth Amendment balance between the interests of the Government and the privacy right of the individual is also struck much more favorably to the Government at the border. The court then recognized this Court's holding that "the detention of a traveler at the border, beyond the scope of a routine customs search and inspection, is justified at its inception if customs agents, considering all the

facts surrounding the traveler and [his] trip, reasonably suspect that the traveler is smuggling contraband in [his] alimentary canal." *Id.* 473 U.S. at 541. [A4].

The Petitioner in this case arrived from Jamaica, was a native of Nigeria, and had traveled through Ecuador. All three of these nations are "source countries" for narcotics. Although defendant had a passport and credit cards, he carried only twenty dollars in currency. Orlandi testified that this was consistent with a swallower who was a U.S. resident, as they are often paid here and thus travel with little cash. Orlandi's suspicion was heightened further when defendant refused a request that he submit to an x-ray examination. This refusal, the Third District, found was significant since an x-ray examination would have easily determined whether the reasonable suspicion that the Petitioner was concealing contraband was justified. As such, the Third District found that the trial court correctly determined that defendant's initial detention was reasonable. [A4-A5].

The Third District then turned to the trial court's evaluation of the propriety of Petitioner's continuing detention and conclusion that its length and nature rendered it unreasonable. The court recognized that circumstances may arise that could render a traveler's continued detention an unreasonable seizure, and therefore unconstitutional. The court relying on this Court's opinion in *Montoya de Hernandez* held that where a traveler at the border is reasonably suspected to be an internal drug carrier and refuses to consent to an x-ray examination without any medical justification, it is permissible to detain the suspect "until [his] bodily processes dispel the suspicion that [he] will introduce a harmful agent into this country." 473 U.S. at 544. [A5-A6]

The Third District recognized that United States Circuit Court of Appeals in *United States v. Adekunle*, 980 F.2d 985

(5th Cir. 1992) and *United States v. Esieke*, 940 F.2d 29 (2nd Cir. 1991) have adopted a rule that requires the agency overseeing detentions to inform the prosecuting attorney within 24 hours of its decision to detain a suspected smuggler, who must in turn immediately notify a judge and the detainee's counsel of the continued detention. However, the Third District rejected the judicial supervision requirement since it is inconsistent with this Court's position in *Montoya de Hernandez* that "the detention of a suspected alimentary canal smuggler at the border is analogous to the detention of a suspected tuberculosis carrier at the border: both are detained until their bodily processes dispel the suspicion that they will introduce a harmful agent into this country. *Id.* 473 U.S. at 544. [A6-A7].

In applying the foregoing holding, the Third District found that the length and nature of Petitioners's eight-day detention resulted solely from the his extreme evasive actions of refusing to eat and walk about, desperately avoiding having a bowel movement, and even swallowing his own feces. While the length of the detention and the unsavory events that followed may be offensive, it is equally apparent that the Petitioner alone was responsible for his situation and that he was, at all times, capable of ending the ordeal by consenting to an x-ray or by simply allowing nature to take its course. Accordingly, the Third District concluded that the trial court erred in finding that Petitioner's continued detention was unreasonable and reversed the trial court's order granting Petitioner's motion to suppress evidence and remanded the case for trial. [A7].

REASONS FOR DENYING THE WRIT

THE DECISION OF THE COURT BELOW THAT WHERE A TRAVELER AT THE BORDER IS REASONABLY SUSPECTED TO BE AN INTERNAL DRUG CARRIER AND REFUSES TO CONSENT TO AN X-RAY EXAMINATION WITHOUT ANY MEDICAL JUSTIFICATION, IT IS PERMISSIBLE TO DETAIN THE SUSPECT, WITHOUT JUDICIAL INTERVENTION, UNTIL THE SUSPECT PASSES THE INGESTED MATERIAL IS THE CORRECT STATEMENT OF THE LAW AND THUS THE WRIT SHOULD BE DENIED.

In *United States v. Montoya de Hernandez*, 473 U.S. 531, 105 S. Ct. 3304, 87 L. Ed. 2d 381 (1985), the Court considered the unique problems presented by the advent of alimentary canal smuggling. The Court found that in accordance with "Congress' power to protect the Nation by stopping and examining persons entering this country, the Fourth Amendment's balance of reasonableness is qualitatively different at the international border than in the interior." Id. 473 U.S. at 538. The Court also emphasized that individuals presenting themselves for entry into the United States have a lesser expectation of privacy at the border than in the interior. Id. 473 U.S. at 539-40. Based on these considerations, the Court stated:

> We hold that the detention of a traveler at the border, beyond the scope of a routine customs search and inspection, is justified at its inception if customs agents, considering all the facts surrounding the traveler and her trip, reasonably

> suspect that the traveler is smuggling contraband in her alimentary canal.
>
> The "reasonable suspicion" standard has been applied in a number of contexts and effects a needed balance between private and public interests when law enforcement officials must make a limited intrusion on less than probable cause. It thus fits well into the situations involving alimentary canal smuggling at the border: this type of smuggling gives no external signs and inspectors will rarely possess probable cause to arrest or search, yet governmental interests in stopping smuggling at the border are high indeed. Under this standard, officials at the border must have a "particularized and objective basis for suspecting the particular person" of alimentary canal smuggling.

Id. 473 U.S. at 541-42. In essence, the Court concluded that an extended border detention of a suspected alimentary canal smuggler would not violate the Fourth Amendment, so long as reasonable suspicion supported the decision to detain the suspect.

The Court then went on to consider whether the more than sixteen hour "detention of [Montoya] was reasonably related in scope to the circumstances which justified it initially." Id. 473 U.S. at 542. The Court's analysis of this issue began with an admonition that "courts should not indulge in 'unrealistic second-guessing,' " and that " 'creative judge[s], engaged in *post hoc* evaluations of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished.' " *Id.* The Court went on to make the following observations:

The rudimentary knowledge of the human body which judges possess in common with the rest of humankind tells us that alimentary canal smuggling cannot be detected in the amount of time in which other illegal activity may be investigated through brief *Terry*-type stops. It presents few, if any external signs: a quick frisk will not do, nor will even a strip search. In the case of respondent the inspectors had available, as an alternative to simply awaiting her bowel movement, an x-ray. They offered her the alternative of submitting herself to that procedure. But when she refused that alternative, the customs inspectors were left with only two practical alternatives: detain her for such time as necessary to confirm their suspicions, a detention which would last much longer than the typical *Terry* stop, or turn her loose into the interior carrying the reasonably suspected contraband drugs.

The inspectors in this case followed this former procedure. They no doubt expected the respondent, having recently disembarked from a 10-hour direct flight with a full and stiff abdomen would produce a bowel movement without extended delay. But her visible efforts to resist the call of nature, which the court below called "heroic," disappointed this expectation and in turn caused her humiliation and discomfort. Our prior cases have refused to charge police with delays in investigatory detention attributable to the suspect's evasive actions and that principle applies here as well. Respondent alone was

> responsible for much of the duration and discomfort of the seizure.

Id. 473 U.S. at 543, (citations omitted). Accordingly, Montoya's detention was held to be reasonable under the Fourth Amendment.

Justice Stevens concurred in the judgment based on his belief that the prolonged detention of Montoya was justified by her choice of refusing to consent to an x-ray examination that would have easily determined whether the reasonable suspicion that she was concealing contraband was justified. Justice Stevens would have held that customs agents may require that a nonpregnant person reasonably suspected of alimentary canal drug smuggling to submit to an x-ray examination as an incident to a border search. *See United States v. Oyekan*, 786 F. 2d 832 (8th Cir. 1986) (reasonable suspicion that a person is an alimentary canal smuggler may justify an involuntary x-ray examination); *United States v. Vega-Barvo*, 729 F. 2d 1341 (11th Cir. 1984) (pre *Montoya* case holding that customs inspectors need not seek a search warrant to perform an x-ray examination on an individual who is detained based on reasonable suspicion that the individual is an alimentary canal smuggler).

In the instant case, reasonable suspicion supported the decision to detain the Petitioner as an alimentary canal smuggler. The extended border detention was reasonable because Petitioner refused to submit to an x-ray examination.[2] His extended

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[2] Another alternative would be to allow for an x-ray examination based upon a reasonable suspicion that the individual is an alimentary canal smuggler. The existence of reasonable suspicion and the propriety of the x-ray examination which would be the basis for the warrantless arrest, as with all warrantless arrests, would be determined

detention, without judicial intervention, until he moved his bowels is all that is required by the Fourth Amendment. Judicial intervention during an extended detention, such as the one under consideration, could only result in the judicial approval of the detention until the suspect moves his bowels or an order forcing the suspect to submit to an x-ray examination. In both situations the end result would be the same, a determination of whether the suspect is in fact a drug smuggler.

The Petitioner herein controlled the length of his detention and it could have lasted only long enough to have an x-ray examination. The results thereof would have either ripened the reasonable suspicion that Petitioner was trafficking in illegal drugs to probable cause or he would have been released from detention. If probable cause was established, Petitioner would have been arrested and promptly taken to a neutral magistrate to determine if probable cause existed for the warrantless arrest. It was Petitioner's attempt to evade detection which did not allow the customs officer to complete his investigatory detention. Thus, Petitioner should not be permitted to benefit from his voluntary decision to forego an x-ray examination and extend his detention. *Stewart v. LaGrand*, _ U.S. __, 118 S. Ct. 1018, __ L. Ed. 2d__ (1999) (petitioner waived his claim that his execution by lethal gas violated his

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after the fact by a detached neutral magistrate. *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). This would allow the prompt determination by a neutral magistrate that probable cause existed for the arrest. The Fourth Amendment does not require a prompt determination by a neutral magistrate that reasonable suspicion exists in an extended border detention situation. Requiring an x-ray would protect the rights of all individuals from the harm caused by illegal drug smuggling and those individuals wrongly suspected of alimentary canal smuggling. It would be the quickest and safest method to determine whether the individual is an alimentary canal smuggler.

Eighth Amendment right to be free from cruel and unusual punishment by choosing to be executed by lethal gas rather than lethal injection).

CONCLUSION

Based on the foregoing reasons, the Respondent, the State of Florida, respectfully requests that this Court deny the Petition for Writ of Certiorari to the Third District Court of Appeal of Florida.

Respectfully submitted,

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